LIBRARY
SUPREME COURT, U. S.
NOV 9 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-633

CELANESE CORPORATION and FIBER INDUSTRIES, INC.,
Petitioners,

v.

THE HONORABLE ROBERT W. HEMPHILL, DISTRICT JUDGE,
Respondent.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

JAY GREENFIELD
Attorney for *Deering Milliken Research Corporation, Moulinage et Retorderie de Chavanoz, and Deering Milliken, Inc.*
345 Park Avenue
New York, New York 10022
Tel. (212) 935-8000

BUTLER, MEANS, EVINS & BROWNE
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
STEPHEN E. KING
Of Counsel

Dated: November 9, 1973

TABLE OF CONTENTS

	PAGE
Statement	2
Argument	
A. Respondent did not abuse his discretion by denying petitioners access to the Court's files	3
B. Requiring petitioners to post a bond as a condition precedent to their inspecting and copying depositions and documents is a reasonable exercise of discretion	5
Conclusion	6

TABLE OF AUTHORITIES

Cases:

Bankers Life & Casualty Co. v. Holland, 346 U.S. 379 (1953)	6
Ex Parte Uppercu, 239 U.S. 915 (1915)	3, 4
Garfield v. Palmieri, 193 F. Supp. 137 (S.D.N.Y. 1961)	4
Molnar v. Gulfcoast Transit Company, 371 F.2d 639 (5th Cir. 1967)	4, 5

Other Authorities:

Rule 19 of the Supreme Court of the United States	6

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-633

CELANESE CORPORATION and FIBER INDUSTRIES, INC.,

Petitioners,

v.

THE HONORABLE ROBERT W. HEMPHILL, DISTRICT JUDGE,

Respondent.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

This brief is submitted by Deering Milliken Research Corporation ("DMRC"), Moulinage et Retorderie de Chavanoz ("Chavanoz"), and Deering Milliken, Inc. ("DMI") in opposition to a petition for certiorari filed by Celanese Corporation ("Celanese") and Fiber Industries, Inc. ("FII").

Statement

Respondent, the Honorable Robert W. Hemphill, United States District Judge for the District of South Carolina, is supervising discovery in thirty-seven complex and consolidated patent-antitrust litigations to which DMRC, Chavanoz and DMI are parties (the "South Carolina action").[1]

Petitioners are not parties to the South Carolina action. They are parties to a totally different patent-antitrust action pending before the District Court for the Southern District of Florida (the "Florida action"). Nevertheless, they have applied to respondent for unfettered access to the thousands of pages of records and documents in the South Carolina action which are located in the Office of the Clerk of the District Court of South Carolina.

Respondent, in order to protect the offices of the Court and its personnel from undue burden and disruption of activity (App. 3a), would not permit petitioner's unfettered access. However, as several parties to the South Carolina action had indicated they had no objection to furnishing petitioners with the materials they requested, respondent granted them permission to obtain the required information from the willing parties.

As petitioners represented to the Court that they were willing to pay any necessary costs incident to obtaining this information, respondent, in order to insure payment by these non-parties, required them to post a $50,000 surety bond conditioned upon their payment of such sums.

---

1. *Duplan Corporation, et al.* v. *Deering Milliken, et al.* (Civ. No. 71-306).

Petitioners, dissatisfied with these reasonable requirements, filed a petition for a writ of mandamus with the Fourth Circuit Court of Appeals seeking to vacate respondent's order and requiring him to permit inspection and copying of the materials in the Court's possession.

The Fourth Circuit denied the writ, and the sole question presented by petitioners is:

Should this Court grant a writ of certiorari to review the holding below that the respondent did not abuse his discretion by permitting petitioners to inspect and copy records and documents possessed by litigants only on the condition that they post a bond to cover costs?

ARGUMENT

The insignificant question of whether the respondent abused his discretion by requiring a litigant in the Florida action to post a bond to cover the costs of inspecting and reproducing the records and documents in the possession of parties to the South Carolina action is so frivolous that it merits neither this Court's consideration nor a lengthy discussion of the issues.

A. Respondent did not abuse his discretion by denying petitioners access to the Court's files.

Petitioners, in total reliance upon *Ex Parte Uppercu*, 239 U.S. 915 (1915), claim that respondent must release to them all non-privileged depositions and exhibits in the South Carolina action. Such reliance is misplaced, for at the most, *Uppercu* stands for the general principle that a litigant has the right to have relevant materials produced.

Respondent's order and conduct were totally consistent with the spirit of *Uppercu* as he granted petitioners the opportunity to obtain the requested materials. Petitioners complain, however, that they should have an absolute right to invade the Court Clerk's office and rifle through thousands upon thousands of pages of depositions and other documents, despite the fact that they can obtain (and are now obtaining) these materials from the parties to the South Carolina action.

The District Court has the right, and the duty, to protect itself and its personnel from harassment, undue burden, and any acts which may disrupt the orderly processes of the Court, for:

> The official functions, powers and duties of a Federal District Judge are not confined to those which he exercises when actually sitting in the seat of judgment. There are numerous functions of an administrative or quasi judicial nature which are indispensable to the proper administration of justice in his court. * * * Indeed, a substantial, some say too substantial, part of the district judge's time must be devoted to such functions. Such functions are just as much a part of a judge's official duties as the hearing of testimony and argument, the charging of a jury, the rendition of judgment, the rendering of judicial decisions and opinions, and other acts which might be considered to be of a purely judicial nature. *Garfield* v. *Palmieri*, 193 F. Supp. 137, 143 (S.D.N.Y.), *aff'd*, 297 F.2d 526 (2d Cir. 1961), *cert. denied*, 369 U.S. 871 (1962).

Moreover,

> * * * good administration in the conservation of precious judicial resources * * * puts the initial burden on the Judge not merely to acquiesce in the procedural posture posed by the parties, but to give procedural

direction to the case to assure the fullest effectiveness in the use of resources consistent with the interests of justice. *Molnar* v. *Gulfcoast Transit Company*, 371 F.2d 639, 640 (5th Cir. 1967).

In refusing petitioners the right to obtain discovery materials from the Clerk's office when they were freely available from an alternative source, respondent acted properly, and gave petitioners access to all materials which they sought.

B. Requiring petitioners to post a bond as a condition precedent to their inspecting and copying depositions and documents is a reasonable exercise of discretion.

Although the desired materials have been made available to petitioners, and although they have explicitly expressed their willingness to pay for the related costs, they now object to their having to post a bond to insure their obligation.

Respondent, recognizing that petitioners are non-parties and "strangers" to the jurisdiction, properly exercised his judicial and administrative powers to insure proper payment.

While petitioners refer to this restriction upon their discovery as "penal" and "punitive," colorful labels applied by disappointed litigants do not advance an appellate court's ability to review the decision below. In fact, this precondition was reasonable and is unworthy of consideration by any appellate court.

It should be noted that while Petitioners claim that respondent's ruling *might* result in the imposition of unreasonable costs, there is no evidence before any tribunal to

indicate that this supposition is true. It can only be presumed that respondent will impose costs which are just, reasonable and consonant with the law, and until petitioners' hypothesis ripens into reality, they can have no standing to complain. For if petitioners are dissatisfied with whatever costs are assessed at some future date, their remedy is to appeal then, not mandamus now. *Bankers Life & Casualty Co.* v. *Holland,* 346 U.S. 379 (1953).

Conclusion

The questions raised in this petition for writ of certiorari cannot conceivably rise to the level of substance and importance worthy of this Court's attention. The issues satisfy none of the requirements of Rule 19 of this Court. No petitioner should impose upon this Court to decide from whom a litigant may obtain documents from which to make copies, and at what price.

The petition for writ of certiorari should be denied.

Respectfully submitted,

JAY GREENFIELD
Attorney for *Deering Milliken Research Corporation, Moulinage et Retorderie de Chavanoz, and Deering Milliken, Inc.*
345 Park Avenue
New York, New York 10022
Tel. (212) 935-8000

BUTLER, MEANS, EVINS & BROWNE
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
STEPHEN E. KING
Of Counsel

Dated: November 9, 1973